

AMENDED IN SENATE DECEMBER 17, 2009

AMENDED IN ASSEMBLY JUNE 1, 2009

AMENDED IN ASSEMBLY APRIL 13, 2009

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL

No. 814

Introduced by Assembly Member ~~Krekorian~~ *Hill*

February 26, 2009

An act to amend Sections 12010 and 12021 of the Penal Code, relating to firearms.

LEGISLATIVE COUNSEL'S DIGEST

AB 814, as amended, ~~Krekorian~~ *Hill*. Firearms: surrender.

Existing law directs the Attorney General to establish a Prohibited Armed Persons File, as specified.

This bill would urge local law enforcement agencies to obtain a secured mailbox from the Department of Justice in order to receive information from the Prohibited Armed Persons File, and would encourage review of the file in connection with the relinquishment of firearms by defendants subsequent to conviction, as specified.

Existing law makes it an offense for a person convicted of a felony, who is addicted to narcotics, or, for a period of 10 years, for a person who is convicted of specified misdemeanors, to own, purchase, receive, have in their possession or under their custody or control any firearm, as specified. Existing law provides for a notice to a defendant of these provisions, as specified.

This bill would establish a procedure for a defendant who owns, has possession, custody, or control of a firearm, to sell the firearm to a firearms dealer or relinquish the firearm to a law enforcement agency

in order to comply with the prohibitions described above. The procedure would in part require the defendant to disclose whether the defendant owns or has possession, custody, or control of any firearms and to list those firearms. The bill would provide procedures for persons in or out of custody to relinquish their firearms, including designating a law enforcement agency or a person as the defendant's designee, and would require the defendant or the defendant's designee to file a form showing, among other things, the date the firearm was relinquished. Failure to timely file the form would, subject to exception, be an infraction punishable by a fine not exceeding \$500.

By creating a new infraction, this bill would impose a state-mandated local program. By imposing additional duties on local law enforcement agencies, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 12010 of the Penal Code is amended to
2 read:
3 12010. (a) The Attorney General shall establish and maintain
4 an online database to be known as the Prohibited Armed Persons
5 File. The purpose of the file is to cross-reference persons who have
6 ownership or possession of a firearm on or after January 1, 1991,
7 as indicated by a record in the Consolidated Firearms Information
8 System, and who, subsequent to the date of that ownership or
9 possession of a firearm, fall within a class of persons who are
10 prohibited from owning or possessing a firearm.
11 (b) The information contained in the Prohibited Armed Persons
12 File shall only be available to those entities specified in, and
13 pursuant to, subdivision (b) or (c) of Section 11105, through the

1 California Law Enforcement Telecommunications System, for the
2 purpose of determining if persons are armed and prohibited from
3 possessing firearms.

4 (c) Local law enforcement agencies are urged to obtain a secured
5 mailbox from the Department of Justice in order to receive updated
6 information from the Prohibited Armed Persons File. Local law
7 enforcement is further encouraged to review this information
8 against the declarations in any Prohibited Persons Relinquishment
9 Form received in accordance with paragraph (2) of subdivision
10 (d) of Section 12021 and to retrieve any illegally possessed firearms
11 whenever possible.

12 SEC. 2. Section 12021 of the Penal Code is amended to read:

13 12021. (a) (1) Any person who has been convicted of a felony
14 under the laws of the United States, the State of California, or any
15 other state, government, or country or of an offense enumerated
16 in subdivision (a), (b), or (d) of Section 12001.6, or who is addicted
17 to the use of any narcotic drug, and who owns, purchases, receives,
18 or has in his or her possession or under his or her custody or control
19 any firearm is guilty of a felony.

20 (2) Any person who has two or more convictions for violating
21 paragraph (2) of subdivision (a) of Section 417 and who owns,
22 purchases, receives, or has in his or her possession or under his or
23 her custody or control any firearm is guilty of a felony.

24 (b) Notwithstanding subdivision (a), any person who has been
25 convicted of a felony or of an offense enumerated in Section
26 12001.6, when that conviction results from certification by the
27 juvenile court for prosecution as an adult in an adult court under
28 Section 707 of the Welfare and Institutions Code, and who owns
29 or has in his or her possession or under his or her custody or control
30 any firearm is guilty of a felony.

31 (c) (1) Except as provided in subdivision (a) or paragraph (2)
32 of this subdivision, any person who has been convicted of a
33 misdemeanor violation of Section 71, 76, 136.1, 136.5, or 140,
34 subdivision (d) of Section 148, Section 171b, 171c, 171d, 186.28,
35 240, 241, 242, 243, 243.4, 244.5, 245, 245.5, 246.3, 247, 273.5,
36 273.6, 417, 417.6, 422, 626.9, 646.9, 12023, or 12024, subdivision
37 (b) or (d) of Section 12034, Section 12040, subdivision (b) of
38 Section 12072, subdivision (a) of former Section 12100, Section
39 12220, 12320, or 12590, or Section 8100, 8101, or 8103 of the
40 Welfare and Institutions Code, any firearm-related offense pursuant

1 to Sections 871.5 and 1001.5 of the Welfare and Institutions Code,
2 or of the conduct punished in paragraph (3) of subdivision (g) of
3 Section 12072, and who, within 10 years of the conviction, owns,
4 purchases, receives, or has in his or her possession or under his or
5 her custody or control, any firearm is guilty of a public offense,
6 which shall be punishable by imprisonment in a county jail not
7 exceeding one year or in the state prison, by a fine not exceeding
8 one thousand dollars (\$1,000), or by both that imprisonment and
9 fine. The court, on forms prescribed by the Department of Justice,
10 shall notify the department of persons subject to this subdivision.
11 However, the prohibition in this paragraph may be reduced,
12 eliminated, or conditioned as provided in paragraph (2) or (3).

13 (2) Any person employed as a peace officer described in Section
14 830.1, 830.2, 830.31, 830.32, 830.33, or 830.5 whose employment
15 or livelihood is dependent on the ability to legally possess a
16 firearm, who is subject to the prohibition imposed by this
17 subdivision because of a conviction under Section 273.5, 273.6,
18 or 646.9, may petition the court only once for relief from this
19 prohibition. The petition shall be filed with the court in which the
20 petitioner was sentenced. If possible, the matter shall be heard
21 before the same judge who sentenced the petitioner. Upon filing
22 the petition, the clerk of the court shall set the hearing date and
23 shall notify the petitioner and the prosecuting attorney of the date
24 of the hearing. Upon making each of the following findings, the
25 court may reduce or eliminate the prohibition, impose conditions
26 on reduction or elimination of the prohibition, or otherwise grant
27 relief from the prohibition as the court deems appropriate:

28 (A) Finds by a preponderance of the evidence that the petitioner
29 is likely to use a firearm in a safe and lawful manner.

30 (B) Finds that the petitioner is not within a prohibited class as
31 specified in subdivision (a), (b), (d), (e), or (g) or Section 12021.1,
32 and the court is not presented with any credible evidence that the
33 petitioner is a person described in Section 8100 or 8103 of the
34 Welfare and Institutions Code.

35 (C) (i) Finds that the petitioner does not have a previous
36 conviction under this subdivision no matter when the prior
37 conviction occurred.

38 (ii) In making its decision, the court shall consider the
39 petitioner's continued employment, the interest of justice, any
40 relevant evidence, and the totality of the circumstances. The court

1 shall require, as a condition of granting relief from the prohibition
2 under this section, that the petitioner agree to participate in
3 counseling as deemed appropriate by the court. Relief from the
4 prohibition shall not relieve any other person or entity from any
5 liability that might otherwise be imposed. It is the intent of the
6 Legislature that courts exercise broad discretion in fashioning
7 appropriate relief under this paragraph in cases in which relief is
8 warranted. However, nothing in this paragraph shall be construed
9 to require courts to grant relief to any particular petitioner. It is
10 the intent of the Legislature to permit persons who were convicted
11 of an offense specified in Section 273.5, 273.6, or 646.9 to seek
12 relief from the prohibition imposed by this subdivision.

13 (3) Any person who is subject to the prohibition imposed by
14 this subdivision because of a conviction of an offense prior to that
15 offense being added to paragraph (1) may petition the court only
16 once for relief from this prohibition. The petition shall be filed
17 with the court in which the petitioner was sentenced. If possible,
18 the matter shall be heard before the same judge that sentenced the
19 petitioner. Upon filing the petition, the clerk of the court shall set
20 the hearing date and notify the petitioner and the prosecuting
21 attorney of the date of the hearing. Upon making each of the
22 following findings, the court may reduce or eliminate the
23 prohibition, impose conditions on reduction or elimination of the
24 prohibition, or otherwise grant relief from the prohibition as the
25 court deems appropriate:

26 (A) Finds by a preponderance of the evidence that the petitioner
27 is likely to use a firearm in a safe and lawful manner.

28 (B) Finds that the petitioner is not within a prohibited class as
29 specified in subdivision (a), (b), (d), (e), or (g) or Section 12021.1,
30 and the court is not presented with any credible evidence that the
31 petitioner is a person described in Section 8100 or 8103 of the
32 Welfare and Institutions Code.

33 (C) (i) Finds that the petitioner does not have a previous
34 conviction under this subdivision, no matter when the prior
35 conviction occurred.

36 (ii) In making its decision, the court may consider the interest
37 of justice, any relevant evidence, and the totality of the
38 circumstances. It is the intent of the Legislature that courts exercise
39 broad discretion in fashioning appropriate relief under this
40 paragraph in cases in which relief is warranted. However, nothing

1 in this paragraph shall be construed to require courts to grant relief
2 to any particular petitioner.

3 (4) Law enforcement officials who enforce the prohibition
4 specified in this subdivision against a person who has been granted
5 relief pursuant to paragraph (2) or (3) shall be immune from any
6 liability for false arrest arising from the enforcement of this
7 subdivision unless the person has in his or her possession a certified
8 copy of the court order that granted the person relief from the
9 prohibition. This immunity from liability shall not relieve any
10 person or entity from any other liability that might otherwise be
11 imposed.

12 (d) (1) Any person who, as an express condition of probation,
13 is prohibited or restricted from owning, possessing, controlling,
14 receiving, or purchasing a firearm and who owns, purchases,
15 receives, or has in his or her possession or under his or her custody
16 or control, any firearm but who is not subject to subdivision (a) or
17 (c) is guilty of a public offense, which shall be punishable by
18 imprisonment in a county jail not exceeding one year or in the
19 state prison, by a fine not exceeding one thousand dollars (\$1,000),
20 or by both that imprisonment and fine. The court, on forms
21 provided by the Department of Justice, shall notify the department
22 of persons subject to this subdivision. The notice shall include a
23 copy of the order of probation and a copy of any minute order or
24 abstract reflecting the order and conditions of probation.

25 (2) (A) For any person who is subject to subdivision (a), (b),
26 or (c), the defendant shall, following conviction, relinquish all
27 firearms he or she owns, possesses, or has within his or her custody
28 or control in the manner described in subparagraphs (D) and (E).
29 Using the Prohibited Persons Relinquishment Form developed by
30 the Department of Justice, the defendant shall name a designee
31 and grant the designee power of attorney for the purpose of
32 transferring or disposing of any firearm. The defendant may name
33 a consenting law enforcement agency as his or her designee.

34 (B) For any person who is subject to subdivision (a), (b), or (c),
35 the court shall, upon conviction, instruct the defendant that he or
36 she is prohibited from owning, purchasing, receiving, possessing,
37 or having under his or her custody or control any firearm, and that
38 he or she shall relinquish all firearms through a designee in the
39 manner provided in this section. The court shall provide the
40 defendant with a Prohibited Persons Relinquishment Form.

1 (C) The Prohibited Persons Relinquishment Form shall do all
2 of the following:

3 (i) Inform the defendant that he or she is prohibited from
4 owning, purchasing, receiving, possessing, or having under his or
5 her custody or control any firearm, and that he or she shall
6 relinquish all firearms through a designee within the time periods
7 set forth in subparagraphs (D) and (E).

8 (ii) Require the defendant to declare whether he or she owned,
9 possessed, or had in his or her custody any firearms at the time of
10 his or her conviction, and require the defendant to describe the
11 firearms with as much detail as possible.

12 (iii) Require the defendant to name a consenting designee and
13 grant the designee power of attorney for the purpose of transferring
14 or disposing of all firearms.

15 (iv) Require the designee to declare that he or she is not
16 prohibited from possessing all firearms under state or federal law
17 and indicate his or her consent to the designation.

18 (v) Require the designee to state the date each firearm was
19 relinquished and the name of the party to whom it was relinquished.

20 (D) The following procedures shall apply to any defendant who
21 is not in custody following conviction:

22 (i) The designee shall dispose of any firearm the defendant
23 owns, possesses, or has within his or her custody or control within
24 five days of the conviction by surrendering the firearm to the
25 control of local law enforcement officials, selling the firearm to a
26 firearms dealer, or selling or transferring the firearm to a third
27 party by completing the sale or transfer through a firearms dealer.

28 (ii) During the five-day period following conviction, the
29 defendant shall not be prosecuted for violating subdivision (a),
30 (b), or (c) prior to relinquishment based upon his or her ownership,
31 custody or control, or possession of a firearm within his or her
32 home, provided the firearm was owned or possessed by, or in the
33 custody or control of, the defendant prior to the date of his or her
34 conviction. ~~This provision~~ *clause* shall not apply to a defendant
35 who was, prior to conviction, already prohibited from owning,
36 purchasing, receiving, possessing, or having under his or her
37 custody or control all firearms by state or federal law.

38 (iii) If the defendant does not own, possess, or have within his
39 or her custody or control any firearms to relinquish, he or she shall,
40 within five days following conviction, submit the completed

1 Prohibited Persons Relinquishment Form to the arresting law
2 enforcement agency.

3 (iv) If the defendant owns, possesses, or has within his or her
4 custody or control any firearms to relinquish, following
5 relinquishment, but within five days following the conviction, the
6 defendant's designee shall submit the completed Prohibited Persons
7 Relinquishment Form to the arresting law enforcement agency.

8 (E) The following procedures shall apply to any defendant who
9 remains in custody following conviction:

10 (i) The designee shall dispose of any firearm the defendant
11 owns, possesses, or has within his or her custody or control within
12 14 days of the conviction, by surrendering the firearm to the control
13 of local law enforcement officials, selling the firearm to a firearms
14 dealer, or selling or transferring the firearm to a third party by
15 completing the sale or transfer through a firearms dealer.

16 (ii) During the 14-day period following the conviction, a
17 defendant who remains in custody shall not be prosecuted under
18 subdivision (a), (b), or (c) for his or her ownership of a firearm to
19 be relinquished, provided the firearm was owned by the defendant
20 prior to conviction. This ~~provision~~ clause shall not apply to a
21 defendant who was, prior to conviction, already prohibited from
22 owning, purchasing, receiving, possessing, or having under his or
23 her custody or control any firearm by subdivision (a), (b), or (c).

24 (iii) If the defendant does not own, possess, or have within his
25 or her custody or control any firearms to relinquish, he or she shall,
26 within 14 days following conviction, submit the completed
27 Prohibited Persons Relinquishment Form to the arresting law
28 enforcement agency.

29 (iv) If the defendant owns, possesses, or has within his or her
30 custody or control any firearms to relinquish, the defendant's
31 designee shall, following relinquishment, but within 14 days
32 following conviction, submit the completed Prohibited Persons
33 Relinquishment Form to the arresting law enforcement agency.

34 (v) If the defendant is released from custody during the 14 days
35 following conviction and a designee has not yet taken temporary
36 possession of every firearm to be relinquished as described above,
37 the defendant shall, within five days following his or her release,
38 relinquish every firearm required to be relinquished, as specified
39 in subparagraph (D).

1 (F) Pursuant to Section 1324, no information directly or
2 indirectly derived from the defendant's statement on the Prohibited
3 Persons Relinquishment Form shall be used in any criminal
4 prosecution for illegal possession of that firearm. This protection
5 shall not extend to any prosecution for the unlawful use of a
6 firearm.

7 (G) Failure by a defendant or a designee, except a designee that
8 is a consenting law enforcement agency, to timely file the
9 completed Prohibited Persons Relinquishment Form with the
10 arresting law enforcement agency shall constitute an infraction
11 punishable by a fine not exceeding five hundred dollars (\$500).

12 (H) A law enforcement agency shall not be required to retain a
13 firearm that was relinquished to the law enforcement agency
14 pursuant to this subdivision for more than 30 days after the date
15 on which the firearm was relinquished. After the 30-day period
16 has expired, the firearm is subject to destruction, retention, or
17 transfer by the agency pursuant to Section 12030.

18 (e) Any person who (1) is alleged to have committed an offense
19 listed in subdivision (b) of Section 707 of the Welfare and
20 Institutions Code, an offense described in subdivision (b) of Section
21 1203.073, any offense enumerated in paragraph (1) of subdivision
22 (c), or any offense described in subdivision (a) of Section 12025,
23 subdivision (a) of Section 12031, or subdivision (a) of Section
24 12034, and (2) is subsequently adjudged a ward of the juvenile
25 court within the meaning of Section 602 of the Welfare and
26 Institutions Code because the person committed an offense listed
27 in subdivision (b) of Section 707 of the Welfare and Institutions
28 Code, an offense described in subdivision (b) of Section 1203.073,
29 any offense enumerated in paragraph (1) of subdivision (c), or any
30 offense described in subdivision (a) of Section 12025, subdivision
31 (a) of Section 12031, or subdivision (a) of Section 12034, shall
32 not own, or have in his or her possession or under his or her
33 custody or control, any firearm until the age of 30 years. A
34 violation of this subdivision shall be punishable by imprisonment
35 in a county jail not exceeding one year or in the state prison, by a
36 fine not exceeding one thousand dollars (\$1,000), or by both that
37 imprisonment and fine. The juvenile court, on forms prescribed
38 by the Department of Justice, shall notify the department of persons
39 subject to this subdivision. Notwithstanding any other law, the
40 forms required to be submitted to the department pursuant to this

1 subdivision may be used to determine eligibility to acquire a
2 firearm.

3 (f) Subdivision (a) shall not apply to a person who has been
4 convicted of a felony under the laws of the United States unless
5 either of the following criteria is satisfied:

6 (1) Conviction of a like offense under California law can only
7 result in imposition of felony punishment.

8 (2) The defendant was sentenced to a federal correctional facility
9 for more than 30 days, or received a fine of more than one thousand
10 dollars (\$1,000), or received both punishments.

11 (g) (1) Every person who purchases or receives, or attempts to
12 purchase or receive, a firearm knowing that he or she is prohibited
13 from doing so by a temporary restraining order or injunction issued
14 pursuant to Section 527.6 or 527.8 of the Code of Civil Procedure,
15 a protective order as defined in Section 6218 of the Family Code,
16 a protective order issued pursuant to Section 136.2 or 646.91 of
17 this code, or a protective order issued pursuant to Section 15657.03
18 of the Welfare and Institutions Code, is guilty of a public offense,
19 which shall be punishable by imprisonment in a county jail not
20 exceeding one year or in the state prison, by a fine not exceeding
21 one thousand dollars (\$1,000), or by both that imprisonment and
22 fine.

23 (2) Every person who owns or possesses a firearm knowing that
24 he or she is prohibited from doing so by a temporary restraining
25 order or injunction issued pursuant to Section 527.6 or 527.8 of
26 the Code of Civil Procedure, a protective order as defined in
27 Section 6218 of the Family Code, a protective order issued pursuant
28 to Section 136.2 or 646.91 of this code, or a protective order issued
29 pursuant to Section 15657.03 of the Welfare and Institutions Code,
30 is guilty of a public offense, which shall be punishable by
31 imprisonment in a county jail not exceeding one year, by a fine
32 not exceeding one thousand dollars (\$1,000), or by both that
33 imprisonment and fine.

34 (3) The Judicial Council shall provide notice on all protective
35 orders that the respondent is prohibited from owning, possessing,
36 purchasing, receiving, or attempting to purchase or receive a
37 firearm while the protective order is in effect. The order shall also
38 state that the firearm shall be relinquished to the local law
39 enforcement agency for that jurisdiction or sold to a licensed gun
40 dealer, and that proof of surrender or sale shall be filed within a

1 specified time of receipt of the order. The order shall state the
2 penalties for a violation of the prohibition. The order shall also
3 state on its face the expiration date for relinquishment.

4 (4) If probation is granted upon conviction of a violation of this
5 subdivision, the court shall impose probation consistent with
6 Section 1203.097.

7 (h) (1) A violation of subdivision (a), (b), (c), (d), or (e) is
8 justifiable where all of the following conditions are met:

9 (A) The person found the firearm or took the firearm from a
10 person who was committing a crime against him or her.

11 (B) The person possessed the firearm no longer than was
12 necessary to deliver or transport the firearm to a law enforcement
13 agency for that agency's disposition according to law.

14 (C) If the firearm was transported to a law enforcement agency,
15 it was transported in accordance with paragraph (18) of subdivision
16 (a) of Section 12026.2.

17 (D) If the firearm is being transported to a law enforcement
18 agency, the person transporting the firearm has given prior notice
19 to the law enforcement agency that he or she is transporting the
20 firearm to the law enforcement agency for disposition according
21 to law.

22 (2) Upon the trial for violating subdivision (a), (b), (c), (d), or
23 (e), the trier of fact shall determine whether the defendant was
24 acting within the provisions of the exemption created by this
25 subdivision.

26 (3) The defendant has the burden of proving by a preponderance
27 of the evidence that he or she comes within the provisions of the
28 exemption created by this subdivision.

29 (i) Subject to available funding, the Attorney General, working
30 with the Judicial Council, the California Alliance Against Domestic
31 Violence, prosecutors, and law enforcement, probation, and parole
32 officers, shall develop a protocol for the implementation of the
33 provisions of this section. The protocol shall be designed to
34 facilitate the enforcement of restrictions on firearm ownership,
35 including provisions for giving notice to defendants who are
36 restricted, provisions for informing those defendants of the
37 procedures by which defendants shall dispose of firearms when
38 required to do so, provisions explaining how defendants shall
39 provide proof of the lawful disposition of firearms, and provisions
40 explaining how defendants may obtain possession of seized

1 firearms when legally permitted to do so pursuant to this section
2 or any other provision of law. The protocol shall be completed on
3 or before January 1, 2005.

4 SEC. 3. No reimbursement is required by this act pursuant to
5 Section 6 of Article XIII B of the California Constitution for certain
6 costs that may be incurred by a local agency or school district
7 because, in that regard, this act creates a new crime or infraction,
8 eliminates a crime or infraction, or changes the penalty for a crime
9 or infraction, within the meaning of Section 17556 of the
10 Government Code, or changes the definition of a crime within the
11 meaning of Section 6 of Article XIII B of the California
12 Constitution.

13 However, if the Commission on State Mandates determines that
14 this act contains other costs mandated by the state, reimbursement
15 to local agencies and school districts for those costs shall be made
16 pursuant to Part 7 (commencing with Section 17500) of Division
17 4 of Title 2 of the Government Code.

18
19
20 CORRECTIONS: _____

21 Text—Page 7.
22 _____